

HOUSE BILL No. 1276

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-31.

Synopsis: New generation tax credits. Provides that the department of agriculture may certify taxpayers that invest in certain agricultural businesses as investor members. Provides that an investor member is eligible for a tax credit equal to the lesser of: (1) 50% of the investor member's investment; or (2) \$15,000. Limits the annual amount of credits available per state fiscal year to \$6,000,000.

Effective: January 1, 2008.

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January 11, 2007, read first time and referred to Committee on Ways and Means.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1276

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-3.1-31 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2008]:

4 **Chapter 31. New Generation Agricultural Commodity Tax**
5 **Credit**

6 **Sec. 1. As used in this chapter, "commodity" means the**
7 **following:**

- 8 (1) An agricultural commodity.
9 (2) A horticultural commodity.
10 (3) Livestock (as defined in IC 4-4-3.2-1) and livestock
11 products.
12 (4) An aquacultural commodity.
13 (5) A forestry commodity.
14 (6) Any other commodity designated by the department of
15 agriculture.
16 (7) A commodity enumerated in subdivisions (1) through (6)
17 that is used to produce renewable fuel.



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1 **Sec. 2. As used in this chapter, "development facility" means a**
 2 **facility that:**

- 3 (1) is located in Indiana; and
 4 (2) produces or markets a commodity.

5 **Sec. 3. (a) As used in this chapter, "investor member" means a**
 6 **person that, after December 31, 2007, makes an equity investment**
 7 **in a business entity that is approved, or seeks to be approved, as a**
 8 **new generation processing or marketing entity under section 10 of**
 9 **this chapter. An equity investment may be cash or other property,**
 10 **including a commodity.**

11 **(b) The term does not include a person who is solely a creditor**
 12 **of a new generation processing or marketing entity.**

13 **Sec. 4. (a) As used in this chapter, "new generation processing**
 14 **or marketing entity" means a business entity, other than a sole**
 15 **proprietorship, that satisfies the following requirements:**

- 16 (1) The entity is approved by the department of agriculture
 17 under section 10 of this chapter.
 18 (2) The entity owns or operates a development facility or a
 19 renewable fuel production facility.
 20 (3) The entity has at least four (4) investor members.
 21 (4) The investor members of the entity:
 22 (A) hold a majority of voting rights of the entity and any
 23 governing body of the entity; and
 24 (B) control the hiring and employment of management of
 25 the entity.

26 **(b) The term includes an agricultural cooperative organized or**
 27 **incorporated under IC 15-7-1 that satisfies the requirements**
 28 **enumerated in subsection (a)(1) and (a)(2).**

29 **Sec. 5. As used in this chapter, "pass through entity" means:**

- 30 (1) a corporation that is exempt from the adjusted gross
 31 income tax under IC 6-3-2-2.8(2);
 32 (2) a partnership;
 33 (3) a limited liability company; or
 34 (4) a limited liability partnership.

35 **Sec. 6. As used in this chapter, "person" means an individual, a**
 36 **corporation, a pass through entity, a trust, a fiduciary, or any other**
 37 **business entity.**

38 **Sec. 7. As used in this chapter, "renewable fuel" includes the**
 39 **following:**

- 40 (1) Biodiesel (as defined in IC 6-3.1-27-1).
 41 (2) Ethanol (as defined in IC 6-3.1-28-2) that is not derived
 42 from corn.

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(3) Methane derived from livestock manure.

Sec. 8. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

- (1) IC 6-2.5 (state gross retail and use tax);
- (2) IC 6-3-1 through IC 6-3-7 (adjusted gross income tax);
- (3) IC 6-5.5 (financial institutions tax); and
- (4) IC 27-1-18-2 (insurance premiums tax);

as computed after the application of credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 9. As used in this chapter, "taxpayer" means a person that has state tax liability.

Sec. 10. (a) A business entity that seeks to be approved as a new generation processing or marketing entity must apply to the department of agriculture.

(b) Before the department of agriculture approves a business entity as a new generation processing or marketing entity, the department of agriculture shall require the business entity to submit the following information to the department of agriculture:

- (1) A certificate of existence or other proof of good standing from the secretary of state or, for a business entity that is an agricultural cooperative, proof of organization or incorporation under IC 15-7-1.
- (2) The number of investor members in the business entity.
- (3) The amount and type of capital each investor member invests in the business entity.
- (4) The dates on which each investor member contributes equity to the business entity.
- (5) The number of employees of the business entity and the date by which the business entity will employ the employees.
- (6) The capital costs of the business entity.
- (7) Any other information the department of agriculture determines is necessary.

(c) The department of agriculture may not approve a business entity that fails to submit any information required under subsection (b) as a new generation processing or marketing entity.

Sec. 11. A new generation processing or marketing entity may use the investments of investor members only for the following purposes:

- (1) Acquisition and construction of facilities.
- (2) Acquisition of equipment.
- (3) Acquisition of working capital.
- (4) Marketing and promotion of:

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- (A) the new generation processing or marketing entity; or
 (B) the new generation processing or marketing entity's
 commodities.

(5) Hiring employees.

Sec. 12. The department of agriculture shall approve or deny applications of business entities that seek approval as a new generation processing or marketing entity in the order in which the department of agriculture receives each business entity's approval application.

Sec. 13. (a) The department of agriculture shall adopt criteria to certify a taxpayer as an investor member. The criteria must include the following proof of the taxpayer's investment in a new generation processing or marketing entity:

- (1) The amount of the taxpayer's investment, certified by the new generation processing or marketing entity, as applicable.
 (2) Proof of deposit of the taxpayer's investment by the new generation processing or marketing entity, as applicable.

(b) To be eligible to receive a credit under this chapter, a taxpayer must apply to the department of agriculture for certification as an investor member.

(c) Subject to subsection (d), the department of agriculture shall certify a taxpayer that:

- (1) applies to the department of agriculture for certification; and
 (2) satisfies the criteria adopted by the department of agriculture under subsection (a);

as an investor member. The department of agriculture shall issue a certificate to a taxpayer that is certified under this subsection.

(d) The department of agriculture may not certify a taxpayer as an investor member under this section in a state fiscal year if the sum of:

- (1) the amount of the credit to which the taxpayer would be entitled under section 14 of this chapter for the taxpayer's investment, if certified; plus
 (2) the total amount of credits to which all investor members certified under this section during the state fiscal year are entitled under section 14 of this chapter;

exceeds the limit specified in section 18 of this chapter.

Sec. 14. A taxpayer that is certified as an investor member is entitled to a credit against the taxpayer's state tax liability in an amount equal to the lesser of:

- (1) fifty percent (50%) of the taxpayer's investment in a new

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generation processing or marketing entity; or

(2) fifteen thousand dollars (\$15,000).

Sec. 15. If a pass through entity is entitled to a credit under this chapter but does not have state tax liability against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

Sec. 16. If the amount of the credit determined under this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for the first taxable year in which the taxpayer claims the credit, the taxpayer may carry over the excess to the following taxable years. The amount of the carryover from a taxable year must be reduced to the extent that the taxpayer uses the carryover to obtain a credit under this chapter for a subsequent taxable year.

Sec. 17. To receive the credit provided by this chapter, a taxpayer must do the following:

(1) Claim the credit on the taxpayer's state tax return in the manner prescribed by the department in the taxable year in which the taxpayer invests in the new generation processing or marketing entity.

(2) Submit to the department a copy of the department of agriculture's certificate issued under section 13(c) of this chapter finding that the taxpayer is an investor member.

(3) Submit to the department proof of all information that the department determines is necessary to calculate the credit provided by this chapter.

Sec. 18. The total amount of credits allowable under this chapter for all taxpayers in a state fiscal year may not exceed six million dollars (\$6,000,000).

Sec. 19. A taxpayer may transfer, sell, or otherwise convey a tax credit allowed under this chapter.

Sec. 20. A taxpayer may not claim both a credit under this chapter and an ethanol production credit under IC 6-3.1-28.

Sec. 21. The department of agriculture may adopt rules under IC 4-22-2 to carry out its duties under this chapter.

Sec. 22. This chapter expires December 31, 2020.

SECTION 2. [EFFECTIVE JANUARY 1, 2008] IC 6-3.1-31, as

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1 added by this act, applies only to taxable years beginning after
2 December 31, 2007.

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